

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA**



**ADMINISTRATIVE PROCEDURES
FOR
ELECTRONIC CASE FILING**

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INTRODUCTION

To the extent that these Administrative Procedures conflict with the Court's existing Local Rules, these Administrative Procedures for Electronic Case Filing take precedence. Further, the Court or Clerk may deviate from these Administrative Procedures in specific cases, without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy and inexpensive determination of matters pending before the Court. The Court may also amend these Administrative Procedures at any time without prior notice. Updates to these Administrative Procedures will be immediately posted to the Court's web page at www.wvsd.uscourts.gov.

1. Definitions and Standards

1.1 **CM/ECF** refers to Case Management/Electronic Case Filing. This is the docketing and filing system used by the judiciary and by this Court.

1.2 **Traditionally Filed Document** means a document or pleading presented to the Court for filing in paper or other non-electronic, tangible format.

1.3 **Electronic document** is an electronic version of information otherwise filed in paper form.

1.3.1 An electronic document has the same legal effect as a paper document.

1.3.2 An electronic document is considered timely if received by the Court before midnight, local prevailing time/Eastern Time, on the date set as a deadline, unless the judge specifically requires another time frame. If time of day is of the essence, the assigned judge will order the document filed by a time certain.

1.4 **Electronic Filing** is the electronic transmission of a PDF (portable document format) by uploading the document directly from the filing user's computer into the electronic file via CM/ECF.

1.5 **Electronic File** is the official court record maintained electronically on the Court's servers.

1.5.1 The Clerk's Office shall not maintain a paper court file in any case commenced after the effective date of these procedures except as otherwise provided in these procedures.

1.5.2 The official record shall include, however, any conventional documents or exhibits that cannot be electronically filed in accordance with these procedures.

1.5.3 In criminal cases, the Clerk's Office will retain all original indictments and other charging instruments, plea agreements, executed pleas of guilty, and jury verdict forms after they have been scanned and uploaded to ECF. The electronic file, however, shall constitute the official record in the case.

1.6 **Filing User** is an individual who has a court-issued login and password to file documents electronically.

1.7 **Portable Document Format or PDF** is a type of document formatting which allows a document to be transmitted electronically without changing in the document's appearance or layout. Anyone with a PDF reader may view the document, regardless of operating system, original design application or fonts.

1.7.1 PDF text document is a document created with almost any word processing program (i.e., WordPerfect, Microsoft Word, etc.) that has been converted to PDF without the use of a scanner. The PDF conversion program, in effect, takes a picture of the original document so that the converted document can be opened across a broad range of hardware and software, with layout, format, links and images intact. **A PDF text document is the preferred format for filing documents with the Court** because a PDF text document is considerably smaller in size and allows for text searches within that document.

1.7.2 PDF scanned document is a document converted to PDF by means of a document scanner. When scanning documents to be subsequently filed electronically, filing parties must configure their scanners for black and white at 200 dpi. The filing party is responsible for the legibility of the scanned image. PDF scanned documents are essentially pictures of the original documents and do not allow for text searches within those documents.

1.8 **Notice of Electronic Filing (NEF)** is an e-mail verification generated by the CM/ECF system of the Court's receipt of the electronic document, as well as the official notice of the filing to all other parties. The Notice includes the text of the docket entry, as well as a link to the filed document(s).

2. Scope of Electronic Filing

Subject to the exceptions set forth herein, effective May 1, 2006, all documents shall be filed electronically no matter when the case, civil or criminal, was originally filed.

3. Special Filing Requirements and/or Exceptions from Mandatory Electronic Filing

3.1 **Documents Traditionally Filed**

The following matters or documents shall not be filed electronically, but must be filed in the traditional manner or as otherwise directed:

- A. Parties proceeding *pro se*.
 - i. **Non-prisoner *pro se* filers** may be permitted to file electronically only when permission of the Court has been requested, and the Court

has granted such request by Order. If, during the course of the action, the non-prisoner *pro se* filer retains an attorney, the Clerk shall terminate that person's registration upon the attorney's appearance.

- ii. **Incarcerated *pro se* filers** are not permitted to file electronically. They must file in the traditional manner.
- B. Social Security transcripts. The administrative records in Social Security cases must be filed on CD-ROM, or other method approved by the Clerk in advance, containing the records in PDF.
- C. Pre-indictment grand jury matters that are assigned miscellaneous action numbers by the Clerk, e.g., Notices of Disclosure of Grand Jury materials in criminal investigations; applications for wiretaps; pen registers, or trap and trace; beeper applications for mobile tracking devices; applications under 18 U.S.C. § 2703, requiring production of certain records and precluding notice; and applications for *ex parte* orders to disclose returns and return information; as well as warrants, must be filed in the traditional manner.
- D. Civil cases commenced under seal pursuant to statute (e.g., *qui tam* matters under the Federal Civil False Claims Act; refer to 31 U.S.C. §§ 3729-32 for more information) or sealed pursuant to Order shall be filed in accordance with Section 11 of these procedures.
- E. State Court records may be filed on CD-ROM, or other method approved by the Clerk in advance, containing the records in PDF, if not filed electronically via CM/ECF .
- F. In accordance with the Local Rules, parties shall not file discovery. However, discovery materials to be used in support of any motion, e.g., a motion to compel or for summary judgment, shall be filed electronically with the Court as an attachment to the motion.
- G. Materials that cannot be converted to PDF (e.g., videotape, audiotape, etc.) may be filed by delivering them directly to the Clerk's Office and following Section 13.11 of these procedures.
- H. Such other documents as the presiding judge may permit upon prior motion for good cause shown.

3.2 Documents Filed on Paper and Scanned

The following documents may be filed on paper and may be scanned into CM/ECF by the Clerk's Office:

- A. The charging document in a criminal case, such as the complaint, indictment, and information.
- B. Affidavits for search and arrest warrants and related papers.
- C. Fed. R. Crim. P. 20 and Fed. R. Crim. P. 40 papers received from another court that are not transmitted electronically.
- D. Any pleading or document in a criminal case containing the signature of a defendant, such as a bond, conditions of release, waiver of indictment or plea agreement, etc.
- E. Petitions for violations of supervised release.

4. Pro Se Cases

Electronic filers in *pro se* cases must file all documents electronically, but must serve a copy of the documents on the non-electronic *pro se* parties by traditional means.

5. Social Security Cases

A plaintiff shall file a complaint to initiate an action to seek review of a final decision of the Commissioner pursuant to U.S.C. § 405(g) by completing and filing the form "Complaint for Review of the Decision of the Commissioner of Social Security" posted on this Court's web site at www.wvsd.uscourts.gov.

In Social Security cases, Internet access to all documents is limited to counsel of record and court staff. The public may also view these files at the public terminal in the Clerk's Office. The docket sheet, however, will be available over the Internet to non-parties with PACER subscriptions. Absent a showing of good cause, all documents, notices and orders in Social Security reviews filed in the District Court shall be filed and noticed electronically, except as noted below:

- A. The certified copy of the administrative record is exempt from the Court's civil case redaction requirements. As stated in Section 3.1.B, the administrative records in Social Security cases must be filed on CD-ROM, or other method approved by the Clerk in advance, containing the records in PDF. However, counsel for the defendant must provide a paper copy of the Social Security transcript to the United States

Magistrate Judge to whom the case is assigned or referred and to counsel for the plaintiff.

- B. All other documents in a Social Security case, including Consents to Proceed before the United States Magistrate Judge and briefs, will be filed and served electronically unless the Court otherwise orders.

6. Login and Password; Registration

6.1 Login and Password

Each attorney admitted to practice in the Southern District of West Virginia, including those admitted *pro hac vice*, shall be entitled to one CM/ECF login and password from the District Court upon successful completion of Court-conducted training either in West Virginia or any other U. S. District Court, or upon a showing that s/he has completed an on-line tutorial or other off-site training, or has used CM/ECF in another U. S. District Court for a period of at least six months. The login and password permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers. Users are subject to applicable PACER service fees.

- A. No attorney shall knowingly permit or cause to permit his or her login and password to be used by anyone other than an authorized employee of his or her office.
- B. The attorney shall be responsible for all documents filed with his or her password.
- C. An attorney shall use his or her login and password to file documents in cases in which he or she is counsel of record. Where appropriate, each document should bear the electronic signature or traditional signature of the attorney under whose login and password the document is being filed.
- D. The Court will issue logins and passwords only to attorneys in good standing. To be in good standing, an attorney must meet the requirements within the Local Rules governing admission.

6.2 Registration

- A. Attorney Registration Form: To file electronically, each attorney must complete and sign an Attorney Registration Form. The form is available on the Court's web site at www.wvsc.uscourts.gov.

- B. Attorneys must mail the original Attorney Registration Form to the Clerk, U.S. District Court, at Post Office Box 2546, Charleston, WV 25329, or deliver the form to the public counter at the Clerk's Office at the Robert C. Byrd Federal Courthouse, Suite 2400, 300 Virginia Street, East, Charleston, WV 25301.
- C. The Clerk's Office will send the attorney an e-mail message with the assigned login and password.
- D. After registering, attorneys must change their passwords once received. Logins, however, can only be changed by the Clerk's Office. If an attorney believes that the security of an existing password has been compromised and that a threat to CM/ECF exists, the attorney must change his or her password immediately. In addition, the attorney shall immediately notify the Clerk by telephone of the suspected compromise to the password.
- E. An attorney whose e-mail address, mailing address, telephone or fax number has changed from that of the original Attorney Registration Form shall timely file with the Clerk a Notice of a Change of Address in all cases affected by the attorney's move.

7. Filing

7.1 General

Electronic transmission of a document to CM/ECF in accordance with these Administrative Procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of this Court and constitutes the entry of the document on the docket kept by the Clerk's Office under Rules 58 and 79 of the Federal Rules of Civil Procedure and Rules 32, 49 and 55 of the Federal Rules of Criminal Procedure. E-mailing a document to the Clerk's Office shall not constitute "filing" of the document.

7.2 Filer Required to Maintain Certain Documents:

Documents (a) that are electronically filed and (b) that require signatures, other than or in addition to that of the filers (e.g., affidavits), must be maintained in paper form by the filer until two (2) years after all time periods for appeal expire and all appeals are final. At the request of the Court, the filer must provide the documents for review.

8. Commencement of a Civil Action

A filing user may file a complaint, petition, notice of removal and other initiating documents by logging into the ECF system, selecting **Civil** on the main menu bar, and filing their documents into a “shell” case as fully set forth in the User’s Manual.

8.1 General

The date the filing user completes the transaction to enter the initiating documents in the ECF system, as displayed on the resulting Notice of Electronic Filing, shall constitute the official filing date on the docket sheet for the record of that civil action. Filing users are required to pay the filing fee through Pay.gov, except for:

- ▶ Cases in which the plaintiff seeks to proceed without prepayment of fees, thus the initiating documents must include a motion or application to proceed without prepayment of fees with an affidavit of the plaintiff in support thereof, and a proposed order granting the motion;
- ▶ Cases filed by a seaman pursuant to 28 U.S.C. § 1916, in which case there is no prepayment of fees; and
- ▶ Cases initiated by the United States of America or any of its agencies.

The filing fee is not a matter of form required by Rule, but a statutory requirement.

8.2 Original Complaint

When filing an original complaint, the filing user will select the event “Complaint with Civil Cover Sheet” from the CV Case Initiating Documents category. Documents to be attached to the complaint and civil cover sheet include the proposed summons form(s) and, where appropriate, a motion, affidavit and proposed order allowing the plaintiff to proceed without prepayment of fees.

8.3 Notice of Removal

When filing a notice of removal, the filing user will select the event “Notice of Removal” from the CV Case Initiating Documents category. Documents to be attached to the notice of removal include the civil cover sheet, all state court papers, the state court docket sheet, and, when appropriate, the answer to the complaint. If the removing party seeks to proceed without prepayment of fees, attachments should also include a motion, affidavit and proposed order allowing the plaintiff to proceed without prepayment of fees.

8.4 Clerk's Office Follow-Up

Once a filing user has completed the transaction for opening a new civil case, the Clerk's Office will complete the full case opening process, including assignment of a civil action number, assignment to a judge, and uploading the case documents into the ECF system. If applicable, the Clerk's Office will print and process the summons as stated in Section 9.2(B) herein.

9. Service

9.1 Service of Process

Rule 5(b) of the Federal Rules of Civil Procedure does not permit electronic service of process for purposes of obtaining personal jurisdiction. Therefore, service of process must be in compliance with Fed. R. Civ. P. 4.

9.2 Submission of the Civil Summons

- A. The party requesting the summons must prepare the summons form, including the full style of the case from the complaint or petition on the summons.
- B. The Clerk's Office staff will sign and seal the summons, and return the summons to the party by United States mail. Filers may make alternate arrangements to retrieve the summonses at the public counter in the Clerk's Office.

9.3 Service of Electronically Filed Documents

Whenever a document is filed electronically in accordance with these Administrative Procedures, CM/ECF shall generate and transmit a "Notice of Electronic Filing" to the filing attorney, any other attorney who is a filing user, and any person who has requested electronic notice in that case. A document filed electronically shall be deemed filed at the time and date stated on the Notice of Electronic Filing.

Registration as a participant in ECF shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Civil and Criminal Procedure. If the recipient is a filing user, or has registered to be served via Notice of Electronic Filing (NEF), CM/ECF's e-mailing of the NEF shall be the equivalent of the service of the pleading or other paper by first class mail, postage prepaid, and shall be deemed to satisfy the requirements of Fed. R. Civ. P. 5(b)(2)(D), Fed. R. Civ. P. 77(d), and Fed. R. Crim. P. 49(b).

9.4 Certificate of Service

A certificate of service shall be made part of the document in ECF unless it is the certificate of service for discovery documents. The certificate of service for discovery documents is filed without the discovery document itself pursuant to L. R. Civ. P. 26.3. A certificate of service shall list all parties entitled to service or notice, and the manner in which service or notice was accomplished on each party. Sample language for both types of a certificates of service are posted on the Court's web site at www.wvsd.uscourts.gov.

9.5 Service on Parties Not Registered for ECF

Filers are required to serve copies of any electronically filed pleading, document, or proposed order on parties not registered for ECF in accordance with the Federal Rules of Civil and Criminal Procedure.

9.6 Time to Respond Under Electronic Service

In accordance with Rule 6(e) of the Federal Rules of Civil Procedure and Rule 45 of the Federal Rules of Criminal Procedure, service by electronic means is treated the same as service by mail for purposes of adding three days to the prescribed period to respond.

9.7 Service of Sealed Filing

A sealed filing may or may not produce a Notice of Electronic Filing, depending upon the event code used. Service by the filer of any sealed documents by an alternate method is always required.

9.8 Terminating and Reactivating Electronic Service

A user receiving electronic service in a case may notify the court that service should be terminated by filing a notice stating either (1) that an order for withdrawal for the user has been granted or (2) that the party the user represents is no longer pending in the case. Counsel may file a notice reactivating service with the Court in those situations where service has been terminated.

10. Proposed Amended Pleadings and Documents

10.1 Proposed Amended Pleadings

When leave of Court is sought for the filing of an amended pleading or document, such as an amended complaint or a reply brief, the proposed amended document must be electronically filed as an attachment to the motion.

10.2 Proposed Jury Instructions, Verdict Forms, Special Interrogatories and Voir Dire Questions

Proposed jury instructions, verdict forms, special interrogatories and voir dire questions shall be electronically filed via CM/ECF. Upon request, the presiding judge may require the filing user to submit these documents in standard word processing software via e-mail.

10.3 Proposed Bill of Costs

The proposed bill of costs shall be filed electronically in ECF using the docket event "Proposed Bill of Costs."

11. Sealed Documents, Sealed Cases and Documents Presented *Ex Parte* or for *In Camera* Review

11.1 General

The filing of documents under seal is discouraged. In addition to these procedures, please refer to Local Rules of Civil Procedure 26.4. Sealed document submission falls into two categories: (1) documents in SEALED CASES, and (2) SEALED DOCUMENTS in public cases.

11.2 Electronic Filing of Sealed Documents and Access

Sealed documents and sealed cases will be filed in electronic format except as otherwise provided in these procedures. Motions to seal and any accompanying proposed documents for sealing shall be considered lodged with the Court pending a ruling on the sealing request.

11.3 Paper Copy Requirement

Paper copies of any Reference List under the E-Government Act of 2002, any motion to seal, any response or reply to the motion to seal, any *ex parte* motion to seal, any motion to seal - *in camera*, and any proposed sealed documents submitted as

attachments shall also be submitted to the presiding judicial officer in an envelope prominently marked as containing “PROPOSED DOCUMENTS FOR SEALING.”

11.4 Reference List under E-Government Act of 2002

The Reference List required by the E-Government Act of 2002 containing the complete list of personal data identifiers is filed automatically under seal. Please refer to number 19, Public Access and Privacy Concerns, of these Administrative Procedures, for further instruction. A Notice of Electronic Filing will be generated to all case participants upon filing of the Reference List, and the docket entry is public even though the sealed document is not.

11.5 Sealed Cases

- A. When commencing an action either under seal pursuant to statute or by filing a motion to seal the case, the first document submitted by a party must be submitted in paper format.
- B. All subsequent documents in a sealed case shall be filed electronically unless the party has received different instructions from the court.
- C. All documents filed in a sealed case must be served in paper format. The Court’s electronic notice facilities will not be available for sealed documents. Although an NEF may provide notice of a docket entry, service of the sealed documents is not effected through ECF.

11.6 Sealed Document Filing in Public Cases

A. Motion to Seal - General

If a party wishes to file a sealed motion, then the filing user should file a motion to seal under the Restricted Documents event category in CM/ECF, describe the motion, and if there are attachments, indicate and describe those. **The filing user should exercise caution when describing the sealed motion and any attachments as the docket entry is public, even though the motion to seal and any attachments are not until the Court rules on the merits of the motion to seal. A Notice of Electronic Filing will be generated to all case participants upon filing of the motion to seal containing the description the filing user entered into the event, but the sealed document will not be viewed electronically by case participants by using the PACER system.**

B. Response or Reply to Motion to Seal

If a filing user wishes to file a sealed response or reply to the motion to seal, s/he shall select the Motion to Seal under the Restricted Documents event category in CM/ECF and attach the response or reply to the motion to seal. The docket entry is public, but the document will remain sealed until the Court rules on the merits of the motion to seal. A Notice of Electronic Filing will be generated to all case participants, but the sealed document will not be viewed by all case participants by using the PACER system.

C. *Ex Parte* Sealed Motion or Motion to Seal *In Camera*

If a party wishes to file an *ex parte* sealed motion in a criminal case or submit documents for *in camera* review in a civil or criminal case, then the filing user should select an *Ex Parte* Sealed Motion or a Motion to Seal - *In Camera* under the Restricted Events category in CM/ECF. The motion and any attachments will be sealed and remain *ex parte* until the Court rules on the merits of the motion. A Notice of Electronic Filing will NOT be generated to the case participants, and there will be no public docket entry for this type of filing unless the Court would direct otherwise. When required by law, the Court will provide public notice of the sealing request.

D. Service of Sealed Documents

In addition to the paper copy requirement for the presiding judicial officer outlined in procedure 11.3, filing users are reminded that they must serve sealed documents in the traditional manner on counsel if required by rule. CM/ECF will not electronically serve sealed material.

E. Proposed Order to Seal

Any motion to seal must include a request for the corresponding order to be sealed. It shall also indicate upon whom the order shall be served, (e.g., counsel of record and additional parties needing to be served). See Appendix A.

12. Discovery

In accordance with the Local Rules, parties shall not file discovery other than certificates of service. However, discovery materials to be used in support of any motion shall be filed electronically with the Court as an attachment to the motion pursuant to L. R. Civ. P 26.3(a).

13. Documents and Other Filings

13.1 Consents to Proceed before a United States Magistrate Judge

Consents to Proceed before a United States Magistrate Judge should be e-mailed to wvsd_consents@wvsd.uscourts.gov, except for Consents in Social Security cases. See 5(B) of these Procedures for Consents in Social Security Cases.

13.2 Submission of Motions and Responses as Separate Documents

Motions and responses should always be filed as separate documents. For example, a cross-motion for summary judgment should never be combined with a response to a motion for summary judgment. It is critical that the cross motion be filed separately so that it will appear on the Court's Pending Motions Report and can be properly linked to any subsequent responses, replies, notices and orders.

13.3 Filing a Memorandum or Brief in Support of a Motion

A memorandum or brief in support of a motion shall not be filed as an attachment to the motion. A separate electronic filing in CM/ECF shall be used for the filing of a memorandum or brief.

13.4 Attachments and Exhibits

This section applies to exhibits to documents being filed in CM/ECF and not to trial exhibits. Trial exhibits may be filed electronically only to the extent practicable.

- A. Filing users must convert exhibits attached to documents to PDF unless the Court permits conventional filing.
- B. When filing exhibits in support of a motion, the exhibits must be attached to the motion, not to the memorandum in support of the motion. Filing users shall not attach as an exhibit any pleading or paper already on file with the Court in that case, but shall merely refer to that document by document number.

13.5 Large Documents

A. Size

Because large documents may not upload properly to CM/ECF or download within a reasonable amount of time for users with a 56K modem, documents

over two megabytes will be rejected by CM/ECF. Therefore, the size limit of each PDF document filed in ECF is two megabytes (2,097,152 bytes¹).

B. Large Documents to be Broken into Separate Parts

Filing users must submit PDF files that are larger than two megabytes by separating the large document into smaller sections, each section being no larger than two megabytes, by use of ECF's attachment feature. When a document exceeds two megabytes, the main document shall consist of the first two megabytes of the document, with the remainder of the document being filed as attachments thereto and described on the attachment screen; e.g., "Continuation of Main Document, pages 51-100," "Continuation of Main Document, pages 101-150," and so on, with each attachment not to exceed two megabytes. The filing user must label each part clearly when attaching in ECF.

13.6 Color Documents

For a scanned document to be filed electronically, the scanner must be configured for black and white at 200 dpi rather than color. Documents appearing in color in their original form, such as color photographs, may be scanned in color and then uploaded to the system.

13.7 Legibility

The filing party is responsible for the legibility of the scanned document.

13.8 Document Retention

Except for criminal case documents mentioned in section 1.5.3 above, the filing user shall retain all documents containing original signatures of anyone other than the filing user for a period of not less than two (2) years after all dates for appellate review have expired.

¹As a rule of thumb, two megabytes are equivalent to approximately 50 pages of plain, typed text or 30 to 40 pages of scanned information. For more detailed information, refer to "Checking Document Size and Reducing Documents During Conversion" posted on this court's web site at www.wvsc.uscourts.gov.

13.9 Copies for Judge's Chambers

When electronically filing documents, a paper courtesy copy to the presiding judge is not required except where any motion, memorandum, response or reply, together with documents in support thereof, is 50 pages or more in length or where any administrative record is 75 or more pages in length, or for sealed documents as set forth in procedure 11.3.

13.10 Petitions for Writs of *Habeas Corpus ad Prosequendum* or *ad Testificandum*

Upon the filing of a petition for a writ of *habeas corpus ad prosequendum* or *ad testificandum* with an accompanying order and writ filed as two separate attachments to the petition, the filing user is required to immediately notify the judicial officer who will be signing the proposed order directing the Clerk to issue the writ.

13.11 Materials that Cannot be Converted to PDF Within ECF

A filing user may submit exhibits or materials that cannot be converted to PDF electronic form (e.g., videotape or audiotape) directly to the Clerk's Office. Such materials shall be submitted with a paper cover page containing the case caption, a description of the materials, and a designation of the pleading or motion to which the materials relate (e.g., Videotape Deposition of John Doe, Exhibit 7 to Plaintiff's Motion for Summary Judgment"). The PDF version of the cover page shall be an ECF attachment to the electronically filed pleading, motion or paper to which the materials relate. A paper copy of the Notice of Electronic Filing of the ECF attachment shall also be submitted to the Clerk's Office with the materials.

The Clerk's Office will note in ECF its receipt of the material that cannot be converted to a PDF within ECF with a text-only entry.

The filing user must serve this type of material on all other parties. The Notices of Electronic Filing generated by the electronic filing of the cover page and by the Court's text-only entry noting receipt of materials shall not constitute service.

Any discovery submitted to the Clerk's Office under this section must also adhere to the Local Rules of Civil Procedure regarding the non-filing of discovery materials. See also Section 12 of these procedures and L. R. Civ. P. 26.3.

This section is not intended to apply to oversized photographs or large paper documents that can be reduced in size and then scanned into PDF and uploaded in ECF.

14. Signatures

14.1 Attorney Signatures

The attorney's login and password shall constitute that attorney's signature on all electronically filed documents for purposes of the Local and Federal Rules of Civil and Criminal Procedure, including but not limited to Rule 11 of the Federal Rules of Civil Procedure. A pleading or other document requiring an attorney's signature may be scanned, or may be electronically signed in the following manner: "s/(attorney name)." The correct format for an attorney signature is as follows:

s/ Judith Attorney

Judith Attorney Bar Number: 12345

Attorney for (Plaintiff/Defendant)

ABC Law Firm

123 South Street

Charleston, WV 25301

Telephone: (304) 123-4567

Fax: (304) 123-6789

E-mail: judith_attorney@law.com

14.2 Visiting Attorney/Local Attorney Signatures

Visiting attorneys and their local counsel, as defined in the Local Rules for the Southern District of West Virginia, shall fully comply with these Administrative Procedures. Local counsel shall sign all documents, including the documents prepared by visiting attorneys regardless of whether the visiting attorney is a filing user with a court-issued login and password.

14.3 Non-Attorney Signatures

If the original document requires the signature of a non-attorney other than a *pro se* filer, the filing party or the Clerk's Office shall scan the original document, then electronically file it in CM/ECF. Alternatively, the filing user may convert the document into a PDF text document and submit the document using "s/" for the signature(s) of the non-attorney(s). The filing user shall retain all documents containing original signatures of anyone other than the filing user for a period of not less than two (2) years after all dates for appellate review have expired.

14.4 Multiple Signatures

The following procedure applies when a stipulation or other document (e.g., joint motion, joint exhibit list or proposed order) requires two or more signatures:

- A. The filing party or attorney shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall obtain the signatures of all parties on the document. For purposes of this rule, physical, facsimile, or electronic signatures are permitted.
- B. The filing party or attorney then may file the scanned document, or shall file the document electronically, indicating the signatories, e.g., “s/Judith Attorney,” “s/John Smith,” etc., in the format as follows:

s/ Judith Attorney

Judith Attorney, Bar Number: 12345

Attorney for (Plaintiff/Defendant)

ABC Law Firm

123 South Street

Charleston, WV 25301

Telephone: (304) 123-4567

Fax: (304) 123-6789

E-mail: judith_attorney@law.com

s/ John Smith

John Smith, Bar Number: 54321

Attorney for (Plaintiff/Defendant)

123 Law Firm

ABC Main Street

Charleston, WV 25301

Telephone: (304) 111-2222

Fax: (304) 222-3333

E-mail: john_smith@mylawoffice.com

- C. Documents that are electronically filed and require original signatures other than that of the filing party must be maintained in paper form by the filing party for a period of not less than two (2) years after all dates for appellate review have expired. On the request of the Court, the filing party must provide original documents for review.

14.5 Authenticity Disputes

A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature or the authenticity of the signature on that document must file an objection within 10 days of receiving the Notice of Electronic Filing, or, if a non-filing user, within 10 days of receiving the document. Should the authenticity of the document be questioned, the presiding judge may require the filing user to produce the original document.

15. Fees Payable to the Clerk

Any fee required for filing a pleading or other document in this Court that is not paid electronically via Pay.gov is payable to the Clerk of the Court by check, money order, cash, or debit/credit card. The Clerk's Office will document the receipt of fees on the docket with an appropriate entry. The Court will not maintain electronic billing or debit accounts for lawyers or law firms.

16. Orders

16.1 Entry of Orders - General

The assigned judge or the Clerk's Office shall electronically file all signed orders. Upon filing, CM/ECF will send a "Notice of Electronic Filing" to all filing users in that case. The Clerk's Office will send a paper copy of the order to all parties not filing electronically. Any order signed electronically has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order, and the order had been entered on the docket conventionally.

16.2 Proposed Orders

- A. A proposed order shall be submitted electronically to ECF as an attachment to the motion requesting the relief to be ordered.
- B. If the proposed order does not require the filing of a motion (e.g., proposed pretrial order or a proposed order for compromise, settlement and dismissal), it shall be submitted electronically as a separate ECF filing.
- C. In preparing the proposed order to be attached to the motion, the filing party will use the word PROPOSED in the description field of the ECF attachment screen, but shall not use the word PROPOSED in the title of the order itself. Likewise, the word PROPOSED shall not be used in proposed orders that are submitted as separate ECF filings. The docket text will reflect that the order is PROPOSED, but the actual document will not.
- D. Upon request, the presiding judge may require the filing user to submit proposed orders in standard word processing software via e-mail directly to chambers so that any necessary changes to the proposed order can be made.

17. Correcting Docket Entries

- A. Once a document is submitted and becomes part of the case docket, corrections to the docket are made only by the Clerk's Office. CM/ECF will not permit the filing party

to make changes to the document(s) or docket entry filed in error once the transaction has been accepted.

- B. The party electronically filing a document shall be responsible for selecting the correct docket entry title for the document by using one of the docket event categories prescribed by the Court. Electronic filing errors in a case may include the selection of the wrong docket entry title from the docket event categories, associating the wrong PDF file with a docket entry, or entering the wrong case number and not discovering the error before the transaction is completed. **The filing party should not attempt to refile the document.**
- C. As soon as possible after an error is discovered, the filing party should contact the Clerk's Office with the case number and document number for which the correction is being requested. If appropriate, the Clerk's Office will make an appropriate corrective docket entry indicating what corrective action was taken. The filing party will be advised if the document needs to be refiled.
- D. Entries made electronically by a filing user and entered on the docket will not be deleted. The Clerk's Office may edit or modify an entry, or delete and/or reattach correct images.
- E. If the Clerk's Office is not able to make a corrective docket entry, when appropriate, it may be necessary for a filing user to submit a motion requesting that a document be stricken in the case in which an incorrect filing is made.

18. Technical Failures

18.1 Technical Failure of the CM/ECF System

- A. The Clerk's Office shall deem the Southern District of West Virginia's CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 10:00 a.m. that day. Known system outages will be posted on the web site, if possible. In such instances where filing is a matter of urgency or is necessary to meet a deadline, the filing user may submit the document to the Court in the traditional manner.
- B. A filing user whose filing is made untimely as the result of a technical failure of the Court's CM/ECF site may seek appropriate relief from the Court. However, filing users are cautioned that, in some circumstances, the Court lacks the authority to grant an extension of time to file (e.g., Rule 6(b) of the Federal Rules of Civil Procedure).

18.2 Technical Failures of the Filing User's System

- A. Problems with the filing user's system, such as phone line problems, utility failures, problems with the filing user's Internet Service Provider (ISP), or hardware or software problems, will not constitute a technical failure under these procedures nor excuse an untimely filing. A filing user who cannot file a document electronically because of a problem with the filing user's system must first contact the Clerk's Office for permission to file the document traditionally or by another alternative means.
- B. If the filer is unable to file electronically because of technical failures, the filer must serve the opposing parties in the traditional manner.

19. Public Access and Privacy Concerns

19.1 Social Security Case Information

The public may retrieve information from CM/ECF over the Internet by obtaining a PACER login and password. In accordance with Judicial Conference policy, the docket sheet for a Social Security case is available for public view over the Internet, while documents in a Social Security case are available for retrieval only to counsel of record, case participants, and court users and at the public terminal in the Clerk's Office.

19.2 Privacy - E-Government Act of 2002

In compliance with the E-Government Act of 2002, Pub.L.107-347, sensitive information should not be included in any document filed with the Court unless such inclusion is necessary and relevant to the case. Remember that any personal information not otherwise protected will be made available over the Internet via PACER. If sensitive information must be included, the following personal data identifiers must be partially redacted from the document, whether it is filed traditionally or electronically:

- A. **Social Security Numbers.** If an individual's Social Security number must be included in a document, only the last four digits of that number should be used.
- B. **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- C. **Dates of Birth.** If an individual's date of birth must be included in a document, only the year should be used.

- D. **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- E. **Home Addresses.** If a home address must be included on a document, only the city and state shall be identified.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may:

- A. File a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete identifiers. The reference list must be filed under seal and may be amended as of right. It shall be retained by the court as part of the record; OR
- B. File an unredacted version of the document under seal with the following heading, "SEALED DOCUMENT PURSUANT TO E-GOVERNMENT ACT OF 2002." This document shall be retained by the Court as part of the record. Filers will still be required to file a redacted version for the electronic file under the appropriate event code to serve as the official court record.

You are advised to exercise caution when filing documents that contain the following:

- A. Personal identification numbers, such as driver's license numbers;
- B. Medical records, treatment and diagnosis;
- C. Employment history;
- D. Individual financial information;
- E. Proprietary or trade secret information;
- F. Information regarding an individual's cooperation with the government;
- G. Information regarding the victim of any criminal activity;
- H. National security information; and
- I. Sensitive security information as described in 49 U.S.C. §114(s).

Counsel is strongly urged to share this information with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that the redaction of personal identifiers is done. The Clerk will not review each document for redaction.

19.3 Privacy - Judicial Conference Policy

In addition to the privacy items listed in Section 19.2 above, the Judicial Conference policy requires that the Court not provide public access to the following documents: unexecuted warrants of any kind; pretrial bail or presentence investigation reports; statements of reasons in the judgment of conviction; juvenile records; documents containing identifying information about jurors or potential jurors in criminal cases; financial affidavits filed in seeking representation pursuant to the Criminal Justice Act (CJA) and other CJA-related forms; *ex parte* requests for expert or investigative services at Court expense; and sealed documents.

19.4 Exemptions

The reaction requirements in Section 19.2 of these procedures shall not apply to the following documents:

- A. In a forfeiture proceeding, a financial account number or real property address that identifies the property alleged to be subject to forfeiture;
- B. The official record of a state court proceeding; and
- C. A filing made in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

20. Public Access to the CM/ECF Docket

20.1 Public Access at the Court

Electronic access to the electronic docket and documents, except certain filings (restricted access or sealed access documents), filed in CM/ECF is available for viewing at no charge at the public terminal in the Clerk's Office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. § 1920.

20.2 Internet Access

Remote electronic access to CM/ECF for viewing purposes is limited to subscribers to Public Access to Court Electronic Records (PACER). The Judicial Conference of

the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information. Application forms and information on PACER can be found on the Court's web site at www.wvsd.uscourts.gov.

20.3 Conventional and Certified Copies

Conventional copies and certified copies of electronically filed documents may be purchased at the Clerk's Office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Appendix A

Sample 1-Civil Actions

AT BECKLEY

JOHN DOE,

Plaintiff,

VS.

CIVIL NO. _____

ALFRED ROE,

Defendant.

ORDER

[illegible]

IT IS FURTHER ORDERED that the Motion to Seal and this Order be SEALED.

The Clerk is directed to serve this Order upon counsel of record (and any other persons entitled thereto).

ENTER:

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Appendix A

Sample 2-Criminal Actions

AT BECKLEY

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. _____

DEFENDANT'S NAME

ORDER

[illegible]

IT IS FURTHER ORDERED that the Motion to Seal and this Order be SEALED.

The Clerk is directed to serve this Order upon counsel of record, the United States Marshal, and the Probation Office of the Court.

ENTER:

United States District Judge